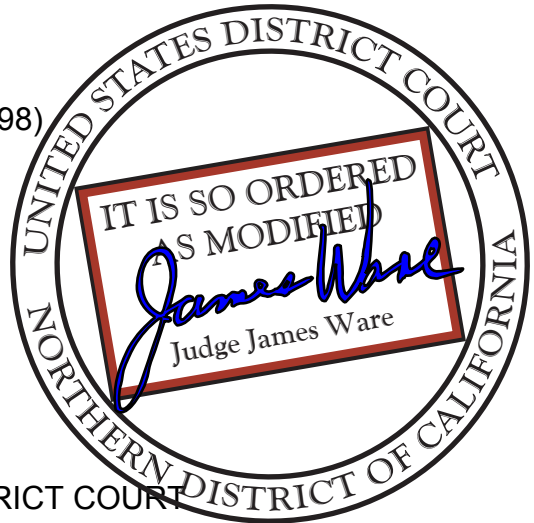


RICHARD DOYLE, City Attorney (#88625)
GEORGE RIOS, Assistant City Attorney (#77908)
ROBERT FABELA, Sr. Deputy City Attorney (#148098)
Office of the City Attorney
200 East Santa Clara Street
San José, California 95113-1905
Telephone Number: (408) 535-1900
Facsimile Number: (408) 998-3131
E-Mail Address: cao.main@sanjoseca.gov

Attorneys for CITY OF SAN JOSE



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JUAN DIAZ, KEITH KEESLING,
CHRISTOPHER MURPHY, GARY
WEEKLEY, KAREN ALLEN and other
employees similarly situated,

Plaintiffs,

v.

CITY OF SAN JOSE,

Defendant.

Case Number: C07-06424 JW

**THIRD STIPULATION AND
[PROPOSED] ORDER EXTENDING
THE EARLY NEUTRAL EVALUATION
PERIOD**

STIPULATION

Pursuant to the stipulation of the parties, the Court, on April 23, 2008, ordered the matter to Early Neutral Evaluation ("ENE") and appointed Thomas Gosselin, Esq. as the evaluator. The parties engaged in an ENE session before Mr. Gosselin on July 21, 2008. At the end of session, it was determined that it would be most efficient for the parties and the court, and would more likely result in the informal resolution of this matter, were the parties to engage in another ENE session with Mr. Gosselin after having a reasonable opportunity to further study the scope of the claims and damages being asserted by Plaintiffs under the Fair Labor Standards Act. The parties also agreed to attempt to address the related case, *Welch*

1 v. *City of San Jose* (Case No. C08-02132 JW) at the second ENE, as some of the legal
 2 issues overlap in the two cases. Combining the ENE of *Diaz v. City of San Jose* and *Welch*
 3 v. *City of San Jose* would further promote efficiency for the parties and the court.

4 The parties subsequently scheduled another joint ENE session with Mr. Gosselin for
 5 September 18, 2008. Due to the complexity of the issues and the number of employees
 6 involved in the case (basically, every firefighter in the San Jose Fire Department), the City
 7 requested, and the Plaintiffs and the evaluator agreed, that the subsequent ENE session
 8 should be rescheduled to October 30, 2008.

9 In the meantime, the City has continued analyzing the issues and gauging its
 10 exposure, a process which has taken longer than originally planned, and will be placing this
 11 matter before the entire City Council in closed session in early November 2008. The City
 12 believes that the second ENE session will be more effective after the City Council has an
 13 opportunity to review this matter in closed session. As such, the parties and the evaluator
 14 have agreed to continue the second ENE session to November 12, 2008 at 1:30 p.m.

15 Therefore, the parties, with Mr. Gosselin's support, stipulate through counsel that the
 16 ENE period will be extended up through and including November 14, 2008, by which time the
 17 parties will have completed the second ENE session.

18 WYLIE, MCBRIDE, PLATTEN & RENNER

19
 20 Dated: October 28, 2008

By: /s/ Carol Koenig
 CAROL KOENIG

21 Attorney for Plaintiffs, JUAN DIAZ, KEITH
 22 KEESLING, CHRISTOPHER MURPHY,
 23 GARY WEEKLEY, and KAREN ALLEN

24 RICHARD DOYLE, City Attorney

25
 26 Dated: October 28, 2008

By: /s/ Robert Fabela
 ROBERT FABELA
 Sr. Deputy City Attorney

27 Attorney for Defendant CITY OF SAN JOSE
 28

1 ATTESTMENT OF CONCURRENCE PER GENERAL ORDER 45 FOR FILING:

2 I attest that concurrence in the filing of this document by the signatories, Robert
3 Fabela and Carol Koenig, has been obtained, and that a record of the concurrence shall be
4 maintained at the Office of the City Attorney.

5 Date: October 28, 2008


By: /s/ Robert Fabela
ROBERT FABELA

~~PROPOSED~~ ORDER

IT IS HEREBY ORDERED that the ENE period shall be extended up through and including November 14, 2008, by which time the parties will schedule another ENE session with the Evaluator regarding both the present case as well as *Welch v. City of San Jose* (Case No. C08-02132 JW).

In light of this Order, the Court continues the Case Management Conference currently set for November 17, 2008 to **December 1, 2008 at 10 a.m.** On or before **November 21, 2008**, the parties shall file a Joint Case Management Statement. The Statement shall include, among other things, an update on the parties' ENE efforts and a discovery plan with a proposed date for the close of all discovery.

Dated: October 30, 2008



JAMES WARE
United States District Judge